

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

HOLLY ASHLEY, DELORES ASHLEY, §
CATHERINE RACHEL JONES, KATELYN §
DELORES ASHLEY, MICHEL ALFORD §
ASHLEY, III, and MARQUEL SIERRA §
ASHLEY, Individually and on Behalf of the §
Estate of MICHEL ALFORD ASHLEY, §
JR., Deceased. §

Case No.: 6:19-cv-00686

vs. §

AMANDA O'DANIEL, ROBERT O'DANIEL, §
and HARTFORD FIRE INSURANCE §
COMPANY §
§

**DEFENDANT HARTFORD FIRE INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446, Defendant Hartford Fire Insurance Company's ("Hartford") files this Notice of Removal, and in support thereof, state as follows:

1. This action, entitled *Holly Ashley, et al. v. Amanda O'Daniel, Robert O'Daniel, and Hartford Fire Insurance Company*; Cause No. 19-0241CV pending in the 278th Judicial District Court of Leon County, Texas (the "State Court Action"), was commenced against Hartford via the filing of Plaintiffs' Amended Original Petition on or about June 20, 2019. *See* Exhibit A-1.

2. Plaintiffs' pleading also alleged causes of action against Amanda O'Daniel and Robert O'Daniel (collectively, the "Dismissed Defendants"). *See id.* On November 12, 2019, Plaintiffs' filed their Joint Motion to Dismiss with Prejudice dismissing the Dismissed Defendants from the State Court Action. *See* Exhibit A-7. On November 14, 2019, the state

district court filed its order dismissing with prejudice Plaintiffs' claims against the Dismissed Defendants. *See* Exhibit A-8.

3. Plaintiff Holly Ashley is a natural person who is a resident citizen of Brazos County, Texas. Plaintiff Holly Ashley was at the time this action was commenced, and still is, a citizen of the State of Texas.

4. Plaintiff Delores Ashley is a natural person who is a resident citizen of Brazos County, Texas. Plaintiff Delores Ashley was at the time this action was commenced, and still is, a citizen of the State of Texas.

5. Plaintiff Catherine Rachel Jones is a natural person who is a resident citizen of Burleson County, Texas. Plaintiff Catherine Rachel Jones was at the time this action was commenced, and still is, a citizen of the State of Texas.

6. Plaintiff Katelynn Delores Ashley is a natural person who is a resident citizen of Burleson County, Texas. Plaintiff Katelynn Delores Ashley was at the time this action was commenced, and still is, a citizen of the State of Texas.

7. Plaintiff Michiel Alford Ashley, III is a natural person who is a resident citizen of Brazos County, Texas. Plaintiff Michiel Alford Ashley, III was at the time this action was commenced, and still is, a citizen of the State of Texas.

8. Plaintiff Marquel Sierra Ashley is a natural person who is a resident citizen of Tom Green County, Texas. Plaintiff Marquel Sierra Ashley was at the time this action was commenced, and still is, a citizen of the State of Texas.

9. Defendant Amanda O'Daniel is a natural person who is a resident citizen of Leon County, Texas Defendant Amanda O'Daniel was at the time this action was commenced, and still is, a citizen of the State of Texas.

10. Defendant Robert O'Daniel is a natural person who is a resident citizen of Leon County, Texas. Defendant Robert O'Daniel was at the time this action was commenced, and still is, a citizen of the State of Texas.

11. Hartford is a corporation organized under the laws of Connecticut and has its principal place of business in Hartford, Connecticut. Under applicable law, therefore, Hartford was at the time this action was commenced, and still is, a citizen of the State of Connecticut.

12. Because Plaintiffs and the Dismissed Defendants were both citizens of Texas, complete diversity did not exist at the time that the Amended Original Petition was filed in the State Court Action. However, diversity exists as a result of the dismissal of their claims against the Dismissed Defendants on November 14, 2019. *See Scott v. Communications Services, Inc.*, 762 F.Supp. 147, 151 (S.D.Tex.,1991) (“A suit against both a non-diverse defendant and a diverse defendant may become removable by the diverse defendant if the plaintiff voluntarily dismisses the action against the non-diverse defendant with prejudice, because there is no risk that diversity will later be destroyed.”). This Notice of Removal is therefore timely filed within thirty (30) days after the receipt by Hartford of a copy of a pleading from which it could first be ascertained that the case had become removable. 28 U.S.C. § 1446(b)(3). Removal is also within one year after commencement of the State Court Action. 28 U.S.C. § 1446(c).

13. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441, because the case is a civil action between citizens of different States, wherein the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

14. In the Amended Original Petition, Plaintiffs “pleads for monetary relief of over \$1,000,000.” *See* Exhibit A-1 at 4. The \$75,000 amount in controversy requirement of 28 U.S.C. § 1332(a) is therefore satisfied.

15. This Court therefore has original jurisdiction over this action under 28 U.S.C. § 1332, and removal of this action to this Court is proper under 28 U.S.C. § 1441.

16. Copies of all materials required by 28 U.S.C. § 1446(a) are attached as Exhibits 1 through 9 of Exhibit “A” filed with this Notice.

17. For these reasons, this action is properly removable from the 278th Judicial District Court of Leon County, Texas, to the United States District Court for the Western District of Texas, Waco Division, such being the district and division where the State Court Action is pending.

18. Hartford will give notice of the filing of this Notice of Removal to all parties through their counsel of record and will file a copy of this Notice of Removal in the State Court Action, as required by 28 U.S.C. § 1446(d).

19. Hartford does not waive and specifically reserve any and all objections, exceptions, or defenses to the Petition, including but not limited to moving to have this matter dismissed.

Respectfully submitted,

By: /s/ Thomas M. Spitaletto
Thomas M. Spitaletto
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**ATTORNEY FOR DEFENDANT,
HARTFORD FIRE INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Removal has been served upon counsel of record via the Court's ECF electronic notice on this 4th day of December, 2019:

David Hammit
David Hammit LLC
19 South Madison Street
Madisonville, TX 77864
david@hammitlaw.com

/s/Thomas M. Spitaletto
Thomas M. Spitaletto